

## **REMARKS**

### **Status**

This Amendment is responsive to the Office Action dated June 7, 2007, in which claims 1-34 are pending. Claims 1-31 are withdrawn from consideration. Claims 32-34 have been rejected. Accordingly, claims 32-34 are pending in the application, and are presented for reconsideration and allowance.

### **Claim Rejection - 35 USC 103(a)**

Claims 32-34 stand rejected under 35 USC 103 as being unpatentable over Herkstroeter and Wittmershaus. The Examiner states that Herkstroeter discloses dyes of formula I and formula II, referencing Figure 9, page 3093. The Examiner states that Wittmershaus teaches spectral properties of a single BODIPY dyes in polystyrene microspheres and in solutions. Further, the Examiner states that the difference between the instant application and Herkstroeter is that in the instant application a microsphere comprising a capsule containing a dye represented by formula I and II is embodied whereas Herkstroeter is silent about the microsphere.

The Examiner further states:

“It would have been obvious to one of ordinary skill in the art to combine and modify the teachings of Wittmershaus to dope small microspheres with specific azomethine dyes of interest at the time of invention, and the ordinary artisan would have had a reasonable expectation of success of introducing azomethine dyes into capsule to make a microsphere. The dyes in spheres are in a solid environment and one would obviously expect to show different fluorescence when excited by visible light as taught by Wittmershaus et al.”

“Accordingly, one would have been motivated to make the microspheres containing a wide range of dyes, which may include azomethine dyes, based on the prior art available at the time, that the instant invention was made.”

This rejection is respectfully traversed.

Herkstroeter does not disclose or suggest the microspheres for any use, much less the selection of the dyes disclosed for the making of an array utilizing

microspheres. While the dyes of Herkstroeter appear to be similar to the Formula I dyes, there is no disclosure that the dyes of Herkstroeter do not fluoresce when excited by visible light when in a microsphere. With respect to the Formula II dyes of claims 33 and 34, there is no disclosure or suggestion in Herkstroeter of a dye that has a halogen group such as R5 of Formula II. Wittmershaus discloses measurement of spectral properties of dyes in microspheres and in solutions. The dyes of Wittmershaus do not correspond to the dyes of Formula I or Formula II as instantly claimed. There is no suggestion in Wittmershaus of the use of microspheres for an array. Wittmershaus compares spectral properties of dyes in a solvent with dye spectral properties in a microsphere. Wittmershaus teaches that the properties in a solvent may be different than in a microsphere, but individual dyes react differently in the two mediums.

The Examiner is apparently urging that an ordinary artisan would have a reasonable expectation of success in introducing Herkstroeter dyes into a capsule to make a microsphere and further one can expect to show different fluorescence when excited by visible light, as shown by Wittmershaus, that therefore the invention is obvious. The Examiner further states one would have been motivated to make microspheres having wide range of dyes which may include azomethine dyes based on with a reasonable chance of success at the time the invention was made. Examiner has alleged no teaching in either reference that would make the combination to reach the invention obvious to one of ordinary skill in the art. The Examiner has not cited references showing the skill in the art that would lead the ordinary artisan to but azomethine dyes into microspheres. There is no teaching to select the dyes of Formula I or Formula II in either reference. Indeed, there do not appear to be any dyes containing halogens of Formula II disclosed in either reference. There is no teaching that after dye selection was made that a microsphere containing the dye would have the claimed ability to not substantially fluoresce when excited by visible light. Wittmershaus actually teaches away from the Examiner's implicit statement that one might expect an encapsulated dye would not substantially fluoresce when excited by visible light. Wittmershaus indicates that sometimes the fluorescence


increases and sometimes it decreases. Therefore, as there is no teaching leading to the invention, it is respectfully requested that this rejection be reconsidered and withdrawn.

### **Summary**

Should the Examiner consider that additional amendments are necessary to place the application in condition for allowance, the favor is requested of a telephone call to the undersigned counsel for the purpose of discussing such amendments.

For the reasons set forth above, it is believed that the application is in condition for allowance. Accordingly, reconsideration and favorable action are respectfully solicited.

Respectfully submitted,

  
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